

A RESOLUTION BY  
COUNCILMEMBER MICHAEL J. BOND

01-R-1895

*Debi Starnes*

A RESOLUTION EXPRESSING THE INTENT OF THE COUNCIL OF THE CITY OF ATLANTA TO SUPPORT THE VALENA HENDERSON VILLAGE, A 34-UNIT DEVELOPMENT OF THE INTERGENERATIONAL RESOURCE CENTER LOCATED AT 431 EDEGEWOOD AVENUE, NE, AND TO FURTHER REQUEST THAT THE EXECUTIVE BRANCH ATTEMPT TO IDENTIFY ADDITIONAL FUNDING FOR THE PROJECT SHOULD FINANCIAL SHORTFALLS OCCUR IN ITS CONSTRUCTION AND DEVELOPMENT; AND FOR OTHER PURPOSES.



# GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS

Jim Hlgdon  
COMMISSIONER

Roy E. Barnes  
GOVERNOR

August 31, 2001

Brenda Sanford  
Valena Henderson Village, L. P.  
444 Edgewood Avenue  
Atlanta, GA 30312-0000

Re: Commitment Letter;  
Valena Henderson Village

DUPLICATE  
ORIGINAL

Dear Ms. Sanford:

The Georgia Housing and Finance Authority ("GHFA"), through the Georgia Department of Community Affairs as its administrator, is pleased to inform you that, based on the application and the information that you have submitted to GHFA (the "Application"), it has approved your Application for a construction/permanent loan, subject to and in accordance with the following terms, provisions, and conditions:

A. **Borrower:** Valena Henderson Village, L. P., a Georgia limited partnership, the managing or sole general partner of which is Valena Henderson Partners, Inc. (the "General Partner"). GHFA's obligation to make the loan is conditioned upon borrower finalizing its organizational structure and submitting such structure to GHFA for approval by October 15, 2001. Without GHFA's prior consent, Borrower may not make any change in its organizational structure or the partners of Borrower, and any such change may require Borrower to submit additional information to GHFA for its review and approval.

B. **Principal Amount:** The construction loan amount will not exceed \$746,000. GHFA will disburse the loan over time, subject to DCA's approval of draw requests submitted by Borrower in accordance with DCA's procedures. If certain conversion conditions are met, the construction loan will convert to a permanent loan in the amount of \$746,000. Typical, illustrative conversion conditions are attached as Exhibit D. Both the amount of the construction loan and the permanent loan are subject to the result of DCA's underwriting of the loan, and GHFA reserves the right to adjust such amounts based on the underwriting results.

C. **The Project:** The "Project" is New Construction of 39 housing units in Fulton County, Georgia (such New Construction is referred to as the "Work"). When the Project is finished, there will be 23 units with 1 bedroom; 16 units with 2 bedrooms; and 0 units with 3 bedrooms.

D. **The Land:** The Project will be located on the "Land" described in Exhibit A. If Borrower does not currently own the Land, Borrower's acquisition of the Land is a condition precedent to GHFA's obligation to make the construction loan. The Land will be part of GHFA's collateral for the loan.

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**E. The Closing:** The construction loan will close (the "Closing") on a date to be fixed by DCA with reasonable advance notice to Borrower. DCA will set the Closing date and determine the priority for closing vis-à-vis other loan applicants by reference to the date on which DCA receives acceptable underwriting materials as referenced below in Paragraph L ("first come, first served"). The Closing will be held at DCA's offices in Atlanta.

**F. Interest:** The interest rates for the construction loan will ordinarily be zero. If the construction loan is converted, the interest rate will ordinarily be 1.0% computed on the basis of a 360-day year. Both interest rates, however, are subject to the results of DCA's underwriting of the loan, and GHFA reserves the right to adjust such rates based on the underwriting results. If there is a default by Borrower, the default interest rate will be 10.0%.

**G. Term:** DCA will determine the maturity date for the construction loan (the "Initial Maturity Date") based on the approved construction schedule submitted by Borrower plus additional time for leasing and stabilizing the Project. If the construction loan is converted, the permanent loan will mature 240 months from the first day of the first month following the conversion date (the "Final Maturity Date"). Unless Borrower satisfies all conversion conditions, GHFA's obligation to convert the construction loan to a permanent loan shall terminate at the Initial Maturity Date. Borrower may prepay the construction loan or permanent loan at any time without penalty, but prepayment will not terminate the Land Use Restriction Agreement ("LURA") that will be recorded at the time of Closing.

**H. Payments:** Unless the construction loan converts, all outstanding principal and any other amounts owed under the construction loan will be due upon the Initial Maturity Date. If the construction loan is converted to a permanent loan, both the nature of Borrower's payments to GHFA (i.e., fully amortizing or partially amortizing with a balloon payment) and the amount of such payments shall be determined based on the results of DCA's underwriting.

**I. Guaranties:** At Closing, all or some of the principals of Borrower's General Partner and the developer(s), as determined in DCA's discretion, shall be required to execute and deliver to GHFA a completion and payment guaranty in form and substance satisfactory to DCA. By its terms, the guaranty will terminate upon full and final completion of the Work (as determined by DCA) and payment of amounts owing under the guaranty (if any) that accrued before completion of the Work.

**J. Federal and Other Requirements:** GHFA's source of funds for the Project will include one or more of the following: the HOME CHDO program; state funds appropriated for HOME loans; and HOME program income. Consequently, Borrower will be required to comply with all requirements imposed by the Cranston-Gonzales National Affordable Housing Act (the "Act") and the HOME regulations promulgated under that Act (the "HOME Regulations") and the GHFA policies and procedures related to CHDO loans. GHFA's obligation to make the construction loan is conditioned upon Borrower's compliance with all applicable Federal laws and regulations relating to the loan and the Project, including (but not limited to) the Davis Bacon Act, site and neighborhood requirements, minority/women business enterprise outreach plan, and affirmative fair housing marketing plan. The loan shall be subject to the requirements

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and provisions of the qualified allocation plan and the consolidated plan for the year in which the Application was submitted. If Borrower is awarded tax credits in connection with the Project, there will be additional requirements and conditions that must be met.

**K. Equity Required:** Borrower will be required to invest at least \$1,989,900 of its own funds in the Project (the "Equity"). When and in what amounts the Equity will be invested before GHFA is required to disburse loan proceeds will be subject to DCA's discretion and approval.

**L. Underwriting and Due Diligence Information:** As soon as possible after acceptance of the Commitment, but in any event no later than 4 months from the date of this letter, Borrower shall provide DCA with the documents, information, and other materials listed in Exhibit B and any other documents or information that DCA may request for its underwriting of the loan, all of which shall be subject to DCA's review and approval. **IF ALL THE MATERIALS SET FORTH IN EXHIBIT B (ALL OF WHICH MUST BE COMPLETE AND CONSISTENT WITH EACH OTHER AND WITH THE INFORMATION SUBMITTED IN CONNECTION WITH THE APPLICATION) ARE NOT RECEIVED BY DCA BY THE ABOVE DATE, DCA MAY TERMINATE THIS COMMITMENT.** At least 30 days before Closing (unless otherwise noted in Exhibit C), Borrower shall provide DCA with all the due diligence documents, materials, and information listed in Exhibit C and any other documents or information that DCA or GHFA may request, all of which shall be in form and content satisfactory to DCA in its sole discretion.

**M. Other Financing:** If the Application indicates that, to complete the Project, Borrower is relying upon sources of funds (whether loans, grants, or subsidies) other than Equity and the GHFA loan, GHFA's obligation to make and close the construction loan is conditioned upon: (a) DCA approving, in its sole discretion, the amount, terms, and conditions of all documents and agreements relating to all such sources of funds; (b) DCA reaching intercreditor or subordination agreement(s) with other lender(s) satisfactory to DCA in its sole discretion; and (c) GHFA's priority with respect to the collateral for the construction loan being satisfactory to DCA. If there will be permanent funding for the Project other than the GHFA loan, GHFA's obligation to make and close the construction loan is conditioned upon DCA reaching a satisfactory tri-party agreement with each other permanent lender.

**N. Miscellaneous.**

**1. Non-Assignability.** Borrower may not assign this Commitment or any part of the GHFA loan (directly or indirectly) without GHFA's prior written consent, which consent may be withheld or granted in GHFA's sole discretion, and any attempt to make such assignment without such consent shall be void and shall be deemed a material default under this Commitment. For purposes of this provision, an "assignment" would include a transfer of a controlling interest in Borrower or removal or replacement of the General Partner.

**2. Entire Agreement.** This Commitment contains the entire agreement of the parties with respect to the commitment of GHFA to make the construction loan to Borrower. No change in this Commitment shall be binding unless in writing and executed by GHFA.

3. **Time.** Time is of the essence with respect to all dates and periods of time set forth in this Commitment.

4. **Survival.** To the extent that its terms are not incorporated in and not in conflict with the GHFA loan agreement and other loan documents relating to the GHFA loan (collectively, the "Loan Documents"), this Commitment and all terms and provisions in it shall survive the Closing and shall not be merged into any of the Loan Documents.

5. **Third Parties.** This Commitment is only for the benefit of the parties. No third party shall have any rights or interest in this Commitment or the proceeds of the loan.

6. **Conditions for Benefit of GHFA.** All conditions in this Commitment are for the sole benefit of GHFA, and GHFA may insist upon the satisfaction of any or all of them or waive any of them in its sole discretion.

7. **Changes.** If Borrower accepts this Commitment and, before Closing, desires to make any change in the Project or the parties or persons involved in it (whether or not Borrower deems the change material), Borrower must notify GHFA in writing before implementation of any such change and describe in detail the nature of the proposed change and the reasons for it. Any such change shall be subject to GHFA's prior approval and any such change may delay the Closing.

O. **Acceptance:** This Commitment will not become effective unless and until Borrower returns to GHFA a fully executed copy of this Commitment on or before September 12, 2001. The executed copy should be returned to Laurel L. Hart, Legal Affairs Manager, Georgia Department of Community Affairs, 60 Executive Park South, N.E., Atlanta, Georgia 30329. IF BORROWER DOES NOT ACCEPT THIS COMMITMENT, SIGN IT, AND RETURN IT TO GHFA BY THAT DATE, THIS COMMITMENT SHALL EXPIRE AND HAVE NO FURTHER FORCE AND EFFECT WITHOUT ANY FURTHER ACTION BY GHFA.

P. **Expiration:** If accepted, this Commitment will expire on April 1, 2002. If the Closing has not occurred by such date, GHFA's obligations under this Commitment will terminate without any further action by GHFA.

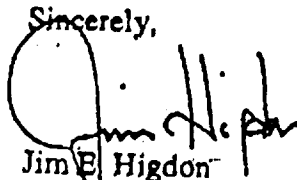
Q. **Attachments:** This Commitment consists of this letter and the following attachments, but, if there is any conflict between this letter and the attachments, this letter shall control:

- Exhibit A      Legal Description of the Land
- Exhibit B      Underwriting Materials
- Exhibit C      Due Diligence Materials
- Exhibit D      Typical Conversion Conditions
- Exhibit E      General Conditions

Exhibit F Other Conditions and Requirements (if applicable)

This Commitment is being issued in response to the Application and the supporting information and materials that were contemporaneously or subsequently submitted in support of it and in reliance on the completeness, truth, and accuracy of the Application and the supporting information and materials. If Borrower accepts this Commitment, Borrower is certifying that all representations and information submitted in or with its Application are true, correct, and complete as of the date of acceptance. If it is subsequently determined that there is any material error, omission, or misrepresentation in the Application, GHFA reserves the right to terminate this Commitment. All materials provided to DCA to satisfy a condition or to substantiate satisfaction of a condition must be satisfactory to DCA (in its sole discretion) in form and content.

Sincerely,

  
Jim E. Higdon  
Executive Director

The undersigned hereby accepts this Commitment and agrees to its terms and conditions.

Date: 9/12/01

Valena Henderson Village, L.P.

By:   
Its General Partner

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

[SEAL]]

**LARGE ATTACHMENT:**

**DOCUMENT(S),**

**MANUAL(S)**

**OR**

**MAP(S)**

**NOT COPIED,**

**PULL ORIGINAL**

**FOR COPY OR TO VIEW**